

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

GEOVANI DAVILA

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CRIMINAL NO. 1: CR-01-018

ORDER

Before the court is Defendant's petition filed pursuant to 28 U.S.C. § 2255. The court will review the petition pursuant to Rule 4 to the Rules Governing Habeas Corpus Cases under Section 2254 to determine if Petitioner is entitled to relief.

Petitioner seeks to vacate, set aside and correct a sentence claiming that his sentence violated the holding in *Blakely v. Washington*, 542 U.S. ___, WL 1402697 (2004). The *Blakely* decision applied to the sentencing structure of the State of Washington. At the present time, the Supreme Court has not declared the United States Sentencing Guidelines unconstitutional, although the issue is pending. Until such time as the Supreme Court rules on this issue, as well as whether any decision on this issue is retroactive and available to raise on collateral review, the instant petition is premature.

IT IS THEREFORE ORDERED THAT:

1) The petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2255 is dismissed without prejudice to refile at the appropriate time.

2) Defendant's motions for appointment of counsel and private investigator, and to request discovery are dismissed as moot.

3) The Clerk of Court shall close the file.

s/Sylvia H. Rambo
Sylvia H. Rambo
United States District Judge

Dated: November 23, 2004.